IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10945 of 2002

For Approval and Signature:

Hon'ble ACTING CHIEF JUSTICE MR.JN BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MOHAMMADHANSAN ABDUL REHMAN PATHAN

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 10945 of 2002

MR ANIL S DAVE for Petitioner No. 1

MR KAMEN N SHUKLA for Petitioner No. 1

MR SJ DAVE, AGP for Respondent No. 1-3

CORAM : ACTING CHIEF JUSTICE MR.JN BHATT

Date of decision: 13/05/2003

ORAL JUDGEMENT

#. Age old contest between liberty and detention has once again surfaced in this petition at the instance of

the petitioner by invocation of the provisions of Article 226 of the Constitution of India.

#. Liberty is a basic and dynamic jurisprudential concept and philosophy, and therefore, it has constitutional and statutory safeguards for the preservation, projection and protection of the liberty of an individual. Since it is a dynamic aspect and concept, continued research is necessary to regularly assess the changing dimension and dynamics of such a constitutional right, personal right of liberty guaranteed under the Constitution, the highest law of the land.

#. Preventive detention has long standing and deep rooted base in this country. The preventive detention is a serious in-road and encroachment on the liberty of a person. All human beings are born with free and equal rights. All human beings are, no doubt, gifted by their creator with certain unalienable, nontransferable, nonnegotiable natural rights. Justice, liberty and equality have been pursuits of human kind and are sine qua non for organized civilized society. Preservation of human life is the most important right for an individual. The personal liberty has been claimed, and, as such, has been acclaimed as a part of the right to life and for the development and protection of this concept, Courts have taken utmost care to protect various aspects of personal liberty as part of protection of life. Article 21 provides for everyone, right to life, liberty and security of person. Article 21 of the Constitution provides that no person shall be deprived of his life or personal liberty except according to procedure established by law. Article 22(5) also provides requisite and sufficient safeguards while encroaching upon the right to personal liberty of an individual. Under various detention laws, the competent authorities are empowered to pass order of detention, provided material and important constitutional and statutory safeguards are observed, and subjective satisfaction has been reached on an objective assessment of the sufficient material. With this prefatory profile of the preventive detention law, it would be interesting and imperative to assess, evaluate and adjudicate upon the challenge against the detention order in this petition on the basis of the material emerging from the record.

#. The petitioner, by way of the present petition, has challenged the detention order dated 31.8.2002 passed under sub-section (2) of Section 3 of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short PASA Act') on the grounds, interalia, that there is a

delay in passing the order of detention, that the detention order is arbitrary, illegal, void ab-initio, suffering from vice of non-application of mind and also in violation of Articles 21 and 22 of the Constitution of India and in violation of the provisions of the PASA Act. The detaining authority has considered the petitioner asa "bootlegger" within the meaning of Section 2(b) of the PASA Act. According to the detaining authority, the activities of the detenu are prejudicial to the maintenance of public order as he is considered to be a habitual offender as also on the ground that various criminal cases are pending, which are denied in the course of hearing on the strength of the record.

#. The facts that emerge from the record manifest the following aspects unequivocally:

(i) The offences registered agaisnt the detenue are dated 23.12.2001, 11.2.2002, 11.4.2002, and 1.5.2002. For the last offence dated 1.5.2002, the detenu came to be arrested on 30.5.2002.

(ii) Statements of witnesses came to be recorded on 13.8.2002 and 30.7.2002. They were verified by the competent authority on 29.8.2002.

(iii) The detention order came to be recorded on 31.8.2002.

#. From the above spectrum of facts, there is no doubt there is delay of about months in passing the detention order from the last offence regsitered against the detenu. It is settled proposition of law that in detention matters, ipso-facto, while passing the order of detention, it is incumbent upon the authority as mandated by law to explain the delay satisfactorily, failing which, the detention order would assume the color of illegality. It is also now well settled that considering the unexplained delay, whether short or long, especially when the detenu has taken a specific defence or plea of delay, the order of detention has to be quashed. No doubt, it is true that in a given case, delay in passing the order of detention after an incident or incidents would not be fatal to detention of a person, for, it may be unavoidable or reasonable. What is required by law is that the delay has to be satisfactorily accounted for or explained by the detaining authority so as to obliterate and snapping of link between the prejudicial activities and the purpose of detention. In the facts of the case, delay has not been explained, much less, satisfactorily. In the opinion of this Court, therefore, there is ample

substance in the plea of delay. It is therefore that the detention order questioned in this writ petition under Article 226 of the Constitution of India cannot be sustained. The detention order, therefore, cannot be said to be legal and valid, and deserves to be quashed and set aside on this ground alone. The view which this Court is inclined to take is also very much supported by the following decisions:

a) Thakore Girishji @ Gidhaji Jenaji v. District Magistrate & Ors. 2002(1) GCD 338

b) Elesh Nandubhai Patel v. Commissioner of Police, Ahmedabad City - 1997(1) GLH 381

c) Pradeep N.Paturkar v. S.Ramamurthi - AIR 1994 SC 656

#. In the result, the petition succeeds, and accordingly it is allowed. The questioned order of detention dated 31.8.2002 is quashed and set aside. The detenu is directed to be set at liberty forthwith, if not required in any other case. Rule is made absolute without any order as to costs. Direct service is permitted.

(J.N.Bhatt, Acting C.J.)

(sunil)